

## CHAPTER 445A

### WATER CONTROLS

#### FINANCIAL ASSISTANCE FOR CONSTRUCTION OF WASTEWATER TREATMENT WORKS AND POLLUTION CONTROL PROJECTS

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## **FINANCIAL ASSISTANCE FOR CONSTRUCTION OF WASTEWATER TREATMENT WORKS AND POLLUTION CONTROL PROJECTS**

### **General Provisions**

**NAC 445A.685 Definitions.** As used in NAC 445A.685 to 445A.805, inclusive, unless the context otherwise requires, the words and terms defined in NAC 445A.686 to 445A.727, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.4205)

**NAC 445A.686 "Act" defined.** "Act" means the Clean Water Act, 33 U.S.C. §§ 1251 et seq., as amended.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42051)

**NAC 445A.687 "Alternative" defined.** "Alternative," as used to describe a method of treating wastewater, means any proven process or technique for the treatment of wastewater which provides for the reclamation and reuse of water, recovers energy, productively recycles the constituents of wastewater or otherwise eliminates the discharge of pollutants. The term includes:

1. Land application of effluent and sludge.
2. Recharge of aquifers.
3. Aquaculture.
4. Direct reuse.
5. Horticulture.
6. Revegetation of disturbed land.
7. Containment ponds.
8. The composting and drying of sludge before land application.
9. Self-sustaining incineration.
10. Recovery of methane.
11. Individual and onsite systems.
12. Small-diameter pressure and vacuum sewers or small-diameter gravity sewers carrying partially or fully treated wastewater.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42052)

**NAC 445A.688 "Best practicable waste treatment technology" defined.**

1. "Best practicable waste treatment technology" means the cost-effective technology that can treat wastewater, combined sewer overflows and nonexcessive infiltration and inflow, to meet the enforceable requirements of the Act, the requirements of a discharge permit issued by the division or to protect the public health.

2. As used in this section:

(a) "Nonexcessive infiltration" means the quantity of infiltration that cannot be economically and effectively eliminated from a sewer system, as determined by a cost-effect analysis.

(b) "Nonexcessive inflow" means a rate of inflow that does not cause chronic operational problems, such as surcharging, backups, bypasses or overflows, related to hydraulic overloading of treatment works.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42053)

**NAC 445A.689 “Building” defined.** “Building” means the erection, acquisition, alteration, remodeling, improvement or extension of any treatment works or project for the control of pollution.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42054)

**NAC 445A.690 “Categorical exclusion” defined.** “Categorical exclusion” means an exemption from any provisions of NAC 445A.685 to 445A.805, inclusive, that would otherwise apply, granted to a category of actions that do not individually or cumulatively have a significant effect on the human environment and for which no environmental assessment or environmental impact statement is required.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42055)

**NAC 445A.691 “Combined sewer” defined.** “Combined sewer” means a sewer that is designed as a sanitary sewer and a storm sewer.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42056)

**NAC 445A.692 “Completion” defined.** “Completion,” as applied to a project, means the time when all the requirements of the construction contract have been satisfied and final payment, including retention, has been made.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42057)

**NAC 445A.693 “Construction” defined.** “Construction” means any erection, building, alteration, remodeling, improvement or extension of treatment works or any combination of these activities.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42058)

**NAC 445A.694 “Conventional” defined.** “Conventional,” as used to describe a method of treating wastewater, means a process or technique for the treatment of wastewater at a centralized treatment plant by means of a biological, physical or chemical unit process followed by direct point source discharge to surface waters.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42059)

**NAC 445A.695 “Department” defined.** “Department” means the state department of conservation and natural resources.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.4206)

**NAC 445A.696 “Director” defined.** “Director” means the director of the department.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42061)

**NAC 445A.697 “Disadvantaged business” defined.** “Disadvantaged business” means a business owned or controlled by women or members of a racial or ethnic minority group.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42062)

**NAC 445A.698 “Division” defined.** “Division” means the division of environmental protection of the department.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42063)

**NAC 445A.699 “Enforceable requirements of the Act” defined.**

1. Except as otherwise provided in this section, “enforceable requirements of the Act” means any condition or limitation of a permit issued pursuant to 33 U.S.C. § 1342 or 33 U.S.C. § 1344, the violation of which may result in the issuance of an order for compliance or the commencement of a civil or criminal action pursuant to 33 U.S.C. § 1319 or any other applicable law.

2. If no permit of the kind described in subsection 1 has been issued, the term means any requirement which, in the judgment of the division, is to be included in the permit when it is issued.

3. If there is no requirement for a permit, the term means any requirement that the division determines is necessary for the best practicable waste treatment technology to meet applicable criteria.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42064)

**NAC 445A.700 “Environmental assessment” defined.** “Environmental assessment” means a concise document that:

1. Provides sufficient evidence and analysis to determine whether an environmental impact statement or a finding of no significant impact is appropriate;

2. Aids compliance by an agency with the Act if no environmental impact statement is necessary; and

3. Facilitates preparation of an environmental impact statement if one is necessary.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42065)

**NAC 445A.701 “Environmental impact statement” defined.** “Environmental impact statement” means the statement required by NAC 445A.754.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42066)

**NAC 445A.702 “Excessive infiltration or inflow” defined.** “Excessive infiltration or inflow” means the quantity of infiltration or inflow that can be economically eliminated from a sewer system, as determined by a cost-effect analysis comparing the cost of correcting the conditions causing the infiltration or inflow to the total cost of transporting and treating the infiltration or inflow.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42067)

**NAC 445A.703 “Facility plan” defined.** “Facility plan” means any necessary plan or study that:

1. Investigates the need for any proposed facility; and

2. Relates directly to treatment works needed to comply with enforceable requirements of the Act or to any other project eligible to receive financial assistance from the fund.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42068)

**NAC 445A.704 “Finding of no significant impact” defined.** “Finding of no significant impact” means a document that presents briefly the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement will therefore not be prepared. The term includes an environmental assessment and any summary of such an assessment.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42069)

**NAC 445A.705 “Fund” defined.** “Fund” means the revolving fund created pursuant to the Act to provide loans and other forms of financial assistance for the construction of wastewater treatment works or pollution control projects.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.4207)

**NAC 445A.706 “Infiltration” defined.** “Infiltration” means the entry of water, other than wastewater, into a sewer system, including sewer service connections, from the ground through such means as defective pipes, pipe joints, connections or manholes.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42071)

**NAC 445A.707 “Inflow” defined.** “Inflow” means the entry of water, other than wastewater, into a sewer system, including sewer service connections, from sources such as roof leaders, cellar drains, springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters or drainage.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42072)

**NAC 445A.708 “Innovative” defined.** “Innovative,” as used to describe a method of treating wastewater, means a process or technique for the treatment of wastewater that is developed but which has not been fully proven under the circumstances of its contemplated use and which represents a significant advance over the state of the art in terms of significant reduction in life cycle cost or significant environmental benefits through:

1. The reclaiming and reuse of water or the elimination of the discharge of pollutants by other means;
2. The use of techniques for recycling, such as land treatment;
3. The more efficient use of energy and resources;
4. The use of new or improved methods of managing the treatment of waste for combined municipal and industrial systems; or
5. The confined disposal for pollutants to prevent water or other environmental pollution.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42073)

**NAC 445A.709 “Interceptor sewer” defined.**

1. “Interceptor sewer” means a sewer designed to intercept wastewater from a final point in a collector sewer and to convey the wastewater directly to a treatment facility or another interceptor.

2. As used in this section, “collector sewer” means a sanitary sewer, within a publicly owned treatment system, that:

- (a) Is located in the public right of way; and
- (b) Collects wastewater discharged through building sewers and conducts it into larger interceptor sewers or to pumping or treatment works.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42074)

**NAC 445A.710 “Maintenance” defined.** “Maintenance” means the preservation of the functional integrity and efficiency of the equipment and structures of treatment works. The term includes preventive maintenance, corrective maintenance and replacement of such equipment.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42075)

**NAC 445A.711 “Mitigation” defined.** “Mitigation” includes:

- 1. Avoiding an environmental impact by not taking a certain action or parts of an action.
- 2. Minimizing an environmental impact by limiting the degree or magnitude of the action and its implementation.
- 3. Rectifying an environmental impact by repairing, rehabilitating or restoring the part of the environment affected.
- 4. Reducing or eliminating an environmental impact over time by preservation and maintenance during the life of the action.
- 5. Compensating for an environmental impact by replacing or providing substitute resources or environments.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42076)

**NAC 445A.712 “Municipality” defined.** “Municipality” means:

- 1. Any city, town, county, district, association or other public body created by or pursuant to the law of this state and having authority over the disposal of sewage, industrial wastes or other wastes; or
- 2. Any Indian tribe or authorized Indian tribal organization.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42077)

**NAC 445A.713 “Nonpoint source” defined.** “Nonpoint source” means a source of water-borne sediments, nutrients or organic and toxic substances originating from activities involving the use of land, such as agriculture, mining, forestry, urban development or construction. The term does not include a discharge at a specific, single location such as a pipe.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42078)

**NAC 445A.714 “Operation” defined.** “Operation” means control of the unit processes and equipment which comprise treatment works. The term includes financial management, the management of personnel and records, laboratory control, process control, safety and planning for emergency operations.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42079)



**NAC 445A.715 “Operation and maintenance” defined.** “Operation and maintenance” means those activities required to ensure the dependable and economical functioning of treatment works.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.4208)

**NAC 445A.716 “Person” defined.**

1. “Person” means the United States, to the extent authorized by federal law, any interstate agency, the state or any agency or institution thereof, or any municipality or other political subdivision of the state.

2. As used in this section, “interstate agency” means an agency of two or more states:

(a) Established by or pursuant to an agreement or compact approved by the Congress of the United States; or

(b) Having substantial powers or duties pertaining to the control of water pollution.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42081)

**NAC 445A.717 “Pollution” defined.** “Pollution” means the man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of water.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42082)

**NAC 445A.718 “Pollution control project” defined.** “Pollution control project” means any eligible component of a program for management established pursuant to 33 U.S.C. § 1329.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42083)

**NAC 445A.719 “Priority list” defined.** “Priority list” means the ordered listing, prepared annually, of projects for which the department expects to provide financial assistance from the fund.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42084)

**NAC 445A.720 “Project” defined.** “Project” means the activities or tasks identified in an agreement for financial assistance for which the recipient may expend, obligate or commit money.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42085)

**NAC 445A.721 “Recipient” defined.** “Recipient” means an entity that receives financial assistance from the fund.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42086)

**NAC 445A.722 “Replacement” defined.** “Replacement” means obtaining and installing equipment, accessories or appurtenances necessary during the life of treatment works to maintain the capacity and performance for which the works have been designed and constructed. The term does not include major rehabilitation, repair or replacement of any capital or fixed assets of treatment works.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42087)

**NAC 445A.723 “Sanitary sewer” defined.** “Sanitary sewer” means a conduit intended to carry liquid- and water-carried wastes from a residence, commercial building, industrial plant or institution together with small quantities of ground, storm or surface waters that are not admitted intentionally.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42088)

**NAC 445A.724 “Storm sewer” defined.** “Storm sewer” means a sewer designed to carry only storm waters, surface runoff, street wash waters or drainage.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42089)

**NAC 445A.725 “Treatment works” defined.** “Treatment works” means:

1. Any device or system used in the storage, treatment, recycling or reclamation of municipal sewage or industrial wastes of a liquid nature, including any interceptor sewer, outfall sewer, sewage collection system, pumping, power or other equipment, and the appurtenances of any of these.

2. Any extension, improvement, remodeling, addition or alteration of any device or system described in subsection 1.

3. Any unit essential to provide a reliable recycled supply, such as a stand-by treatment unit or clear well facility.

4. Any works, including any land that is an integral part of the treatment process or that is used for ultimate disposal of residues resulting from the treatment.

5. Any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste, including storm water runoff, industrial waste or waste in combined storm water and sanitary sewer systems.

6. Any pollution control project.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.4209)

**NAC 445A.726 “User charge” defined.** “User charge” means a charge levied in accordance with 33 U.S.C. § 1284(b) on the users of a treatment works, or that portion of the ad valorem taxes paid by a user for his proportionate share of the cost of operation and maintenance, including replacement, of the works.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42091)

**NAC 445A.727 “Wastewater” defined.** “Wastewater” means a combination of the liquid- and water-carried wastes from a residence, commercial building, industrial plant or institution and any ground water, surface water or storm water that is present. The term includes any pollution having a source that cannot be identified and which may best be controlled by the implementation of a program for management established pursuant to 33 U.S.C. § 1329.

(Added to NAC by Environmental Comm’n, eff. 9-19-90)—(Substituted in revision for NAC 445.42092)

**NAC 445A.728 Purpose and use of revolving fund created pursuant to Clean Water Act.**

1. The primary purpose of the fund is to provide financial assistance as described in this section, other than grants, to municipalities for the construction of publicly owned wastewater treatment works and for the implementation of programs for the management of nonpoint sources of water pollution.

2. The fund may be used to:
    - (a) Provide a loan at or below the market rate of interest;
    - (b) Guarantee a municipal obligation or purchase insurance for such an obligation if required to improve access to credit or reduce the rate of interest paid by the municipality; or
    - (c) Refinance a municipal obligation for an eligible wastewater facility at or below market rates if the debt is incurred and construction begins after March 7, 1985. A municipality that requests refinancing must comply with all the requirements of NAC 445A.685 to 445A.805, inclusive.
- (Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42093)

**NAC 445A.729 Effect of review or approval of documents by or for division.** Review or approval of facility plans, design drawings and specifications or other documents by or for the division is for administrative purposes only and does not relieve the applicant of the responsibility properly to plan, design, build and effectively operate and maintain the treatment works described in the agreement for financial assistance as required under law, regulations, permits, and good management practices. The division is not responsible for increased costs resulting from defects in the design, plans and specifications or other pertinent documents.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42094)

**NAC 445A.730 Resolution of disputes concerning administration of provisions.** Any dispute concerning the administration of the provisions of NAC 445A.685 to 445A.805, inclusive, that is not otherwise resolved must be referred to the administrator for decision. The decision of the administrator is subject to review by the director. As used in this section, administrator means the administrator of the division.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42095)

### **Preliminary Planning of Projects**

**NAC 445A.733 Proposed wastewater treatment works: Contents of facility plan.** A facility plan for a proposed wastewater treatment works must include:

1. A description of the proposed treatment works and the complete waste treatment system of which it is a part.
2. A description of the best practicable wastewater treatment technology.
3. A cost-effect analysis of the feasible conventional, innovative and alternative wastewater treatment works, processes and techniques capable of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other nonmonetary considerations.
4. A demonstration of the nonexistence or possible existence of excessive infiltration or inflow in the sewer system.
5. An analysis of any potential open-space and recreation opportunities associated with the project.
6. An environmental information document that includes an adequate evaluation of the environmental impacts of alternatives. This evaluation must discuss all significant environmental effects of the proposed project and the implications of the project with respect to:
  - (a) Threatened or endangered species;
  - (b) Wetlands;
  - (c) Farmland;
  - (d) Fish and wildlife;

- (e) Cultural resources;
- (f) Open spaces;
- (g) Environmentally sensitive areas;
- (h) Air quality;
- (i) Water quality;
- (j) Consistency with land use plans;
- (k) Energy use;
- (l) Long-term versus short-term trade-offs;
- (m) Growth inducement;
- (n) Floodplains; and
- (o) Consistency with areawide planning, such as basin plans and plans prepared pursuant to section 208 of the Act, 33 U.S.C. § 1288.

7. An evaluation of the implications of the project for the public or private water supply.

8. For the selected alternative, a concise description at an appropriate level of detail of:

- (a) Relevant design parameters.
- (b) Cost effects on users of the wastewater system.
- (c) Institutional and management arrangements required for successful implementation of the project.
- (d) Estimated costs for capital construction, operating and maintenance costs and costs for debt service and a description of the manner in which local costs are to be financed, including a preliminary revenue program in the form prescribed by the division.
- (e) Estimated costs of future expansion and long-term needs for reconstruction of facilities following their design life.

9. A summary of public participation in the development of the facility plan.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.421)

#### **NAC 445A.734 Proposed wastewater treatment works: Cost-effect analysis.**

1. A cost-effect analysis prepared pursuant to NAC 445A.733 must include:

- (a) A description of the relationship between the capacity of alternatives and the needs to be served, including capacity or future growth expected after the treatment works become operational. The description must include estimates from significant industrial and commercial users documenting the need for capacity and the characteristics of existing or projected flows.
- (b) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to the construction of new facilities.
- (c) An evaluation of the alternative methods for the reuse or ultimate disposal of treated wastewater and sludge resulting from the treatment process.
- (d) An evaluation of systems with revenue-generating applications.
- (e) An evaluation of opportunities to reduce the use of energy or to recover energy.
- (f) Information concerning total capital costs and annual operation and maintenance costs, as well as estimated annual or monthly costs to residential, commercial and industrial users.

2. The planning period used in the analysis must be 20 years.

3. The monetary costs to be considered in the analysis must include the present worth or equivalent annual value of all capital costs and operation and maintenance costs.

4. The forecasts of population contained in the analysis must be consistent with those prepared by the department of taxation.

5. As used in this section, "industrial user" means any nongovernmental, nonresidential user of a publicly owned treatment works who is identified in the *Standard Industrial Classification Manual*, 1972 edition, of the Office of Management and Budget under one of the following divisions:

- (a) Division B - Mining.
- (b) Division D - Manufacturing.

A copy of the Manual may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9325, for the price of \$24.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42101)

**NAC 445A.735 Proposed pollution control projects: Contents of facility plan.**

A facility plan for a proposed pollution control project must include:

1. A description of the nonpoint sources of pollution and the areas and waters affected by them.

2. A description of the best management practices considered.

3. A cost-effect analysis of the feasible conventional, innovative and alternative management practices, processes and techniques capable of meeting the applicable effluent, water quality and public health requirements over the design life of the project while recognizing environmental and other nonmonetary considerations.

4. An environmental information document that includes an adequate evaluation of the environmental impacts of alternatives. This evaluation must discuss all significant environmental effects of the proposed project and the implications of the project with respect to:

- (a) Threatened or endangered species;
- (b) Wetlands;
- (c) Farmland;
- (d) Fish and wildlife;
- (e) Cultural resources;
- (f) Open spaces;
- (g) Environmentally sensitive areas;
- (h) Air quality;
- (i) Water quality;
- (j) Consistency with land use plans;
- (k) Energy use;
- (l) Long-term versus short-term trade-offs;
- (m) Floodplains; and

(n) Consistency with areawide planning, such as basin plans and plans prepared pursuant to section 208 of the Act, 33 U.S.C. § 1288, and the nonpoint source management program.

5. For the selected alternative, a concise description at an appropriate level of detail of:

- (a) Relevant design parameters.
- (b) Cost effects on users of the wastewater system.
- (c) Institutional and management arrangements required for successful implementation of the project.

(d) Estimated costs for capital construction, operating and maintenance costs and costs for debt service costs and a description of the manner in which local costs are to be financed, including a preliminary revenue program in the form prescribed by the division.

(e) Estimated costs of future expansion and long-term needs for reconstruction of facilities following their design life.

6. A summary of public participation in the development of the facility plan.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42102)

**NAC 445A.736 Proposed pollution control projects: Cost-effect analysis.**

1. A cost-effect analysis prepared pursuant to NAC 445A.734 must include:
    - (a) A description of the relationship between the capacity of alternatives and the needs to be served, including capacity or future growth expected after the project becomes operational.
    - (b) An evaluation of the alternative methods for the reuse or ultimate disposal of treated wastewater and sludge resulting from the treatment process.
    - (c) Information concerning total capital costs and annual operation and maintenance costs.
  2. The planning period used in the analysis must be 20 years.
  3. The monetary costs to be considered in the analysis must include the present worth or equivalent annual value of all capital costs and operation and maintenance costs.
  4. The forecasts of population contained in the analysis must be consistent with those prepared by the department of taxation.
- (Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42103)

**NAC 445A.737 Requirements for facility plan.** A facility plan for a proposed wastewater treatment works or pollution control project must demonstrate, through a systematic evaluation of alternatives that are feasible in light of the unique demographic, topographic, hydrologic and institutional characteristics of the area, that the alternative selected is the most economical means of meeting the applicable effluent, water quality and public health requirements over the design life of the facility.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42104)

**NAC 445A.738 Public hearing before adoption of facility plan.**

1. Before adopting a facility plan, an applicant for financial assistance must hold a public hearing to describe the proposed project and ensure that the concerns of the public are fully considered.
2. The time, place and subject of the public hearing must be announced conspicuously and adequately by the applicant not less than 30 days before the hearing. Copies of the facility plan must be made available for inspection by the public not less than 15 days before the hearing.
3. Notice of the hearing must be circulated within the geographical area covered by the facility plan by publication in a newspaper of general circulation in the area.
4. Notice of the hearing must be mailed by the applicant to any person or organization included on a mailing list provided by the division.
5. Ten copies of the facility plan must be submitted by the applicant to the state clearinghouse for review.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42105)

**NAC 445A.739 Submission of facility plan to division.** Each facility plan must be submitted to the division for approval.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42106)

## **Environmental Review of Proposed Projects**

**NAC 445A.742 Steps in process of environmental review.** The process of environmental review of a proposed project includes the following steps:

1. An applicant for financial assistance shall consult with the division during the formulation of the project or the preparation of the facility plan to:
  - (a) Determine whether the project is eligible for a categorical exclusion from any applicable provisions of NAC 445A.685 to 445A.805, inclusive;
  - (b) Determine alternatives to the project which must be evaluated;
  - (c) Identify potential environmental issues; and
  - (d) Determine the potential need for partitioning the environmental review process or the need for an environmental impact statement.
2. The division shall determine if the project is eligible for a categorical exclusion. If the project is determined to be ineligible for such an exclusion, the applicant shall prepare an environmental information document for the project. The document must be included in the facility plan.
3. The division shall prepare an environmental assessment and subsequently prepare and issue a finding of no significant impact or a notice of intent to prepare an environmental impact statement and record of decision.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.4211)

### **NAC 445A.743 Duties of division.**

1. The division shall initiate the process of environmental review at the earliest practicable date to identify environmental impacts, avoid delays and resolve conflicts. This process must be integrated with the preparation of the facility plan.
2. A review of environmental information developed by the applicant must be conducted by the division whenever meetings are held to assess progress in the development of the facility plan. These meetings must be held before a preferred alternative is selected.
3. A decision whether to prepare an environmental impact statement must be made as early as practicable during the preparation of the facility plan. The division shall inform interested parties of:
  - (a) The preliminary nature of the division's position on preparing an environmental impact statement;
  - (b) The relationship between the preparation of the facility plan and the process of environmental review;
  - (c) The extent of the public participation program; and
  - (d) The name of a person who may be contacted for further information.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42111)

### **NAC 445A.744 Categorical exclusion: Determination by division; criteria for granting; request for exclusion of additional categories.**

1. The division shall determine whether an action is eligible for exclusion from review pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq.
2. The division may grant a categorical exclusion to:
  - (a) Any action for which the facility plan is directed to the rehabilitation of existing facilities, replacement of equipment or the construction of a new ancillary facility adjacent or appurtenant to an existing facility and not affecting the degree of treatment or capacity of that facility. These actions include, without limitation:

- (1) Infiltration and inflow corrections;
  - (2) Replacement of existing mechanical equipment or structures; and
  - (3) Construction of small structures on existing sites.
- (b) Any action in a sewer community which is for minor upgrading or minor expansion of existing treatment works.
- (c) Any action in an unsewered community where onsite technologies are proposed.
3. The division shall refuse a categorical exclusion if:
  - (a) The facilities to be provided create a new discharge or relocate an existing discharge to surface or ground waters.
  - (b) The facilities result in substantial increases in the volume of discharge or the loading of pollutants from an existing source or from new facilities to receiving waters.
  - (c) The action is known or expected to have a significant effect on the quality of the human environment, whether individually, cumulatively over time or in conjunction with other federal, state, local or private actions.
  - (d) The action is known or expected to affect directly or indirectly cultural resources, habitats of endangered or threatened species, environmentally important natural resource areas such as floodplains, wetlands, important farmlands, aquifer recharge zones or other resource areas.
  - (e) The action is known or expected not to be cost-effective or to cause significant public controversy.
4. The division may request the commission to exclude, by amendment to this section, any other category of projects for which there is sufficient evidence that a significant effect on the quality of the environment is unlikely.  
(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42112)

**NAC 445A.745 Categorical exclusion: Public notice.** If a categorical exclusion is granted:

1. A notice that the exclusion is available for review must be published in a newspaper of general circulation throughout the state.
2. The exclusion must be mailed to each person included on a mailing list maintained by the division. The mailing list must include appropriate federal and state agencies, municipalities and interested members of the public.
3. A copy of the exclusion must be submitted to the state clearinghouse for review.  
(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42113)

**NAC 445A.746 Categorical exclusion: Review.** Thirty days must be allowed for review of any categorical exclusion. If no significant comment is received during that period, the process of environmental review will be considered complete. If any such comment is received during that period, it must be resolved before the process of environmental review is completed.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42114)

**NAC 445A.747 Commitment of financial assistance.** Financial assistance from the fund may be committed upon the completion of the environmental review process unless the division determines that the nature of the project or environmental conditions have changed significantly from those which were considered in the categorical exclusion.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42115)



**NAC 445A.748 Review of completed facility plan; environmental assessment.**

1. The division shall review the completed facility plan with particular attention to the environmental information document and its use in the development of alternatives and the selection of a preferred alternative. An adequate environmental information document must be part of any facility plan submitted. The environmental information document must be of sufficient scope to enable the division to approve or deny any request to partition the environmental review process and to prepare an environmental assessment.

2. The process of environmental assessment must cover all potentially significant environmental impacts. The division shall prepare a preliminary environmental assessment in sufficient detail to serve as an adequate basis for an independent environmental review and for the decision to prepare and issue a finding of no significant impact or an environmental impact statement. The division may require the submission of supplementary information before approving any facility plan. Each of the following areas must be reviewed to identify potentially significant environmental concerns and all potential impacts must be addressed in the environmental assessment:

(a) For the area delineated in the facility plan, the existing environmental conditions relevant to the analysis of alternatives or to determining the environmental impacts of the proposed action.

(b) The relevant future environmental conditions without the project.

(c) The purpose of and need for the facility. This must include a summary discussion and demonstration of the need for wastewater treatment in the area encompassed by the facility plan, with particular emphasis on existing public health or water quality problems and their severity and extent.

(d) A comparative analysis of feasible alternatives, including the no action alternative. The alternatives must be reviewed with respect to:

- (1) Capital and operating costs;
- (2) Direct, indirect and cumulative environmental effects;
- (3) Physical, legal or institutional constraints; and
- (4) Compliance with regulatory requirements.

Special attention must be given to the environmental consequences of long-term, irreversible and induced environmental impacts. The reasons for rejecting any alternative must be presented in addition to any significant environmental benefits precluded by rejection of an alternative.

(e) A full range of relevant environmental impacts of the proposed action must be discussed, including measures to mitigate adverse impacts and any irreversible or irretrievable commitments of resources to the project. Any specific requirements, including conditions of financial assistance and the requirements of an areawide waste treatment management plan or nonpoint source management program, must be identified and referenced. In addition to these items, the division may require that other analyses and data which are needed to satisfy environmental review requirements be included with the facility plan.

3. The division shall not accept a facility plan if the applicant has not made or agreed to make changes in the project in accordance with determinations made in a finding of no significant impact based on its supporting environmental assessment or the record of decision for an environmental impact statement.

4. Sources of information used to describe the existing environment and to assess future environmental impacts must be clearly referenced. These sources must include regional, state and federal agencies with responsibility or interest in the area and actions described in the facility plan.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42116)

**NAC 445A.749 Determination of whether to issue finding of no significant impact or to initiate preparation of environmental impact statement.**

1. The division shall apply the criteria for initiating environmental impact statements to:

- (a) A complete facility plan;
- (b) The environmental information document;
- (c) The preliminary environmental assessment; and
- (d) Any other written material deemed necessary by the division as necessary to make an environmental impact statement determination.

2. If the division determines that an environmental impact statement is to be prepared, a formal environmental assessment is not required. If the division identifies deficiencies in the environmental information document, preliminary environmental assessment or other supporting material, necessary corrections must be made to this material. Any determination to issue a finding of no significant impact or to prepare an environmental impact statement is a final action by the division and is not subject to administrative review.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42117)

**NAC 445A.750 Partitioning of environmental review for components of project.**

1. Under certain circumstances, the building of a portion of a wastewater treatment works may be justified in advance of completing all requirements of the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq., for the remainder of the treatment works. If there are overriding considerations of cost or impaired program effectiveness, the division may award financial assistance for a discrete component of a complete wastewater treatment works.

2. The process of partitioning the environmental review for a discrete component must comply with the criteria and procedures described in subsection 3. In addition, all reasonable alternatives for the overall wastewater treatment works of which the component is a part must have been previously identified, and each part of the environmental review for the remainder of the overall facility plan must comply with all the requirements of NAC 445A.685 to 445A.805, inclusive.

3. To satisfy the criteria for partitioning, a component of a project must:

- (a) Immediately remedy a public health, water quality or other environmental problem;
- (b) Not foreclose any reasonable alternatives identified for the overall wastewater treatment works;
- (c) Not cause significant adverse direct or indirect environmental impacts, including those which cannot be acceptably mitigated without completing the entire wastewater treatment system of which the component is a part; and
- (d) Not be highly controversial.

4. A request for partitioning must contain:

- (a) A description of the discrete component proposed for construction before completing the environmental review of the entire facility plan;
- (b) A description of the manner in which the component meets the criteria described in subsection 3;
- (c) The environmental information required by NAC 445A.685 to 445A.805, inclusive; and
- (d) Any preliminary information that may be important in an environmental impact statement determination for the entire facility plan.

5. The division shall:

- (a) Review the request for partitioning to determine whether it complies with the requirements of this section; and

(b) If partitioning is appropriate, prepare and issue a finding of no significant impact for the component proposed for construction.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42118)

**NAC 445A.751 Finding of no significant impact: Issuance; notice.**

1. If, after completion of the division's review of the facility plan, it is determined that an environmental impact statement will not be required, the division shall issue a finding of no significant impact. This finding must be based upon the division's independent review of the preliminary environmental assessment and any other environmental information deemed necessary. Following the review by the division, the environmental assessment must be finalized and made available for review by the public. The finding of no significant impact must list mitigation measures necessary to make the recommended alternative environmentally acceptable and must note any other environmental documents related to it.

2. Notice of a finding of no significant impact for review must be published in a newspaper of general circulation throughout the state.

3. Copies of a finding of no significant impact must be mailed directly to persons included on a mailing list maintained by the division. The mailing list must include appropriate federal and state agencies, municipalities and interested members of the public. An additional copy of the finding must be submitted to the state clearinghouse for review.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42119)

**NAC 445A.752 Finding of no significant impact: Review.**

1. The period of time allowed for review of finding of no significant impacts is 30 days. If no significant comments are received during that time, the environmental review process shall be deemed complete.

2. Significant comments received during the review period must be resolved before completing the environmental review process.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.4212)

**NAC 445A.753 Provision of financial assistance following finding of no significant impact.**

1. After an environmental assessment has been prepared and the issued finding of no significant impact becomes effective for the facility plan for the study area, a commitment of financial assistance may be made without preparation of an additional finding of no significant impacts, unless the division determines that the project or environmental conditions have changed significantly from those which underwent environmental review.

2. The division shall ensure itself that mitigation measures identified in the facility plan or in the finding of no significant impact will be implemented by the applicant. This must be done by conditioning the agreement for financial assistance and discharge permit upon compliance with all agreed-upon mitigation measures.

3. In any case in which an environmental assessment or categorical exclusion is 5 or more years old, the division shall reevaluate the project, environmental conditions and public views and, before awarding financial assistance:

(a) Issue a public notice reaffirming its decision to proceed with the project without revising the environmental assessment;

(b) Update information and prepare, issue and distribute a revised environmental assessment and finding of no significant impact; or

(c) Withdraw the finding of no significant impact and publish a notice of intent to produce an environmental impact statement. The division shall thereafter prepare, issue and distribute an environmental impact statement and record of decision.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42121)

**NAC 445A.754 Environmental impact statement: When required.** The division shall ensure that an environmental impact statement is prepared and issued whenever the division determines, without limitation, that an action is known or expected:

1. To have a significant effect on the quality of the human environment, either individually, cumulatively over time or in conjunction with other federal, state, local or private actions;

2. To affect directly or indirectly recognized cultural resources, habitats of endangered or threatened species, environmentally important natural resource areas such as floodplains, wetlands, important farmlands, aquifer recharge zones, scenic areas or other resource areas; or

3. Not to be cost-effective or to cause significant public controversy.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42122)

**NAC 445A.755 Environmental impact statement: Procedure for preparing.**

1. If the division determines that an environmental impact statement will be required, the division shall prepare and distribute a notice of intent.

2. As soon as possible after the distribution of the notice of intent, the division shall convene a meeting of affected federal, state and local agencies, affected Indian tribes, the recipient and other interested parties to determine the scope of the environmental impact statement. As part of this meeting, the division shall:

(a) Determine the significant issues to be analyzed in depth in the environmental impact statement;

(b) Identify the preliminary range of alternatives to be considered;

(c) Identify potential cooperating agencies and determine the information or analyses that may be needed from those agencies or other parties;

(d) Discuss the method for preparing the environmental impact statement and the strategy for securing public participation; and

(e) Determine the relationship between the environmental impact statement and the completion of the facility plan and any necessary coordination between the preparers of both documents.

3. Immediately following the meeting required by subsection 2, the division shall commence the identification and evaluation of all potentially viable alternatives to address adequately the range of issues identified at the meeting. Additional issues may be addressed or others eliminated during this process and the reasons for doing so may be documented as part of the environmental impact statement.

4. Except as otherwise provided in subsection 5, after the division determines the need for an environmental impact statement, the division shall:

(a) Cause the statement to be prepared by members of its staff; or

(b) Contract for the preparation of the statement with a qualified consulting firm.

The applicant will be charged a fee to cover the costs incurred in preparing the environmental impact statement.

5. If a federal agency is required to prepare an environmental impact statement, the division and the applicant need not participate in the cost of the environmental impact statement, but shall cooperate in the preparation of the statement.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42123)

**NAC 445A.756 Environmental impact statement: Public notice; distribution of draft.**

1. Upon making a determination that an environmental impact statement is required in connection with a proposed project, the division shall publish in a newspaper of general circulation and shall distribute a notice of intent to publish an environmental impact statement.

2. Copies of the draft environmental impact statement must be provided to all local, state and federal agencies and public organizations having an interest in the proposed project and must be made available to the public for review. The following steps must be followed in distributing the draft:

(a) A notice of the availability of the draft must be published in newspapers of general circulation throughout the state.

(b) The draft must be mailed directly to each person included on a mailing list maintained by the division. The mailing list must include appropriate federal and state agencies, municipalities and interested members of the public.

(c) Copies of the draft must be submitted to the state clearinghouse for review.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42124)

**NAC 445A.757 Environmental impact statement: Review of draft.** The time allowed for review of the draft environmental impact statement is 45 days. If no significant comments are received during that time, the environmental review process shall be deemed complete. Any significant comments received during the period of review must be resolved before completing the environmental review process.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42125)

**NAC 445A.758 Environmental impact statement: Fee for copies of documents.** Members of the public may be charged a reasonable fee, not to exceed the cost of reproduction, for a copy of any draft or final environmental impact statement or any supporting document.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42126)

**NAC 445A.759 Environmental impact statement: Public hearing.** Public hearings must be scheduled by the division and held in accordance with the provisions of chapters 233B and 445A of NRS. The division shall schedule not less than two public hearings. The first of these must be scheduled after alternatives have been developed and the second must be scheduled before the environmental impact statement is finalized.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42127)

**NAC 445A.760 Additional procedures for securing public participation.** The division may institute such additional procedures for securing public participation as are deemed necessary during the environmental review process.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42128)

**NAC 445A.761 Preparation of final environmental impact statement.** After the comment period, public hearings and consideration of comments received during the public participation process, a final environmental impact statement must be prepared. The final environmental impact statement must consist of:

1. The draft environmental impact statement;
2. Comments received concerning the draft environmental impact statement;

3. A list of persons commenting on the draft environmental impact statement;
4. The response of the division to each significant comment received; and
5. Any other information deemed appropriate by the division.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42129)

**NAC 445A.762 Approval of facility plan: Record of decision; provision of financial assistance.**

1. After a final environmental impact statement has been issued, the division shall prepare and issue a record of decision in conjunction with its approval of the facility plan. The record of decision must include an identification of mitigation measures derived from the environmental impact statement process.

2. Before approving a facility plan, the division shall ensure that any mitigation measures identified in the record of decision will be implemented by the applicant. An applicant shall implement mitigation measures agreed upon during the environmental review process. The division shall condition the contract for financial assistance and discharge permit upon compliance by the applicant with agreed-upon mitigation measures.

3. After the record of decision is prepared on the selected or preferred alternative for the facility plan described in the environmental impact statement and the facility plan is approved, a commitment of financial assistance may be made without preparation of supplemental environmental impact statements, unless the division determines that the project or the environmental conditions described within the current environmental impact statement have changed significantly.

4. In any case in which the environmental impact statement is 5 or more years old, the division shall reevaluate the project, environmental conditions and public views, compare them with the information contained in the environmental impact statement and, before awarding financial assistance:

(a) Prepare, issue and distribute a finding of no significant impact, affirming its decision to proceed with the project, and documenting that no additional significant impacts were identified during the reevaluation which would require supplementing the environmental impact statement; or

(b) Conduct additional studies and prepare, issue and distribute a supplemental environmental impact statement and document to the original or any revised decision in an addendum to the record of decision.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.4213)

## **Awarding of Financial Assistance**

### **NAC 445A.765 Establishment and use of priority list.**

1. The department shall provide financial assistance from the fund to projects on a list of projects developed by the division in accordance with a priority system meeting the requirements of NAC 445A.767. The list and system must be designed to achieve the optimum management of water quality consistent with the goals and requirements of the Act.

2. In establishing the priority of projects, the division shall also consider the total amount of money available, the needs and priorities set forth in areawide water quality management plans and any other factors contained in the state priority system.

3. The priority list must include an estimate of the eligible cost of each project.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42135)

### **NAC 445A.766 Establishment of reserves.**

1. In developing its priority list, the division shall establish the reserves required or authorized by the Act.

2. The division may reserve not more than 4 percent of the state's grant awards. This money must be used to administer the fund and to manage the program.

3. The division shall, in accordance with the provisions of 33 U.S.C. § 1384(b), reserve 1 percent of its annual allotment or \$100,000, whichever is more, to carry out water quality management planning.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42136)

### **NAC 445A.767 Use of and requirements for priority system.**

1. A priority system must be used to rank projects that are considered eligible for financial assistance from the fund.

2. The priority system must:

(a) Give highest priority to projects that are necessary to meet the enforceable requirements of the Act.

(b) Establish procedures for administration, management and public participation required to develop and revise the list of projects.

(c) Include the following criteria for ranking projects:

(1) The elimination of pollution from surface waters and ground waters within this state.

(2) The protection of the health of the people of this state from harm caused by the inadequate or improper treatment, collection or disposal of wastewater.

(3) The attainment of standards of water quality adopted by the state environmental commission to protect designated beneficial uses.

(4) The operation of the fund in such a manner so as to impose the least possible financial burden on municipalities.

(d) Include categories of need. A project must fall into at least one of the following categories to be eligible for financial assistance from the fund:

(1) Category I Secondary treatment or any cost-effective alternative thereto.

(2) Category II Advanced treatment (treatment more stringent than secondary treatment).

(3) Category IIIA Infiltration and inflow protection.

(4) Category IIIB Major sewer system rehabilitation.

(5) Category IVA New collection systems and appurtenances.

(6) Category IVB New interceptor sewers and appurtenances.

- (7) Category V      Correction of combined sewer overflows.
  - (8) Category VI     Treatment of wastewaters from nonpoint sources.
- (Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42137)

**NAC 445A.768   Revision of priority system and priority list; public hearings.**

1. The division may revise its priority system and priority list as necessary.
2. The division shall hold public hearings:
  - (a) Before adopting its priority system;
  - (b) Before adopting any significant change to an approved priority system;
  - (c) Before adopting its annual priority list; and
  - (d) Before revising its priority list unless the division determines that the revision is not significant.
3. Public hearings may be conducted in the manner determined by the division or in conjunction with any regular public meeting of the division.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42138)

**NAC 445A.769   Requirements for initial approval of financial assistance.**

1. To obtain approval of financial assistance, an applicant must submit a letter of intent, a facility plan, an environmental document and a draft revenue program. After these documents are approved, the division shall consider the project for initial approval of financial assistance.
2. Factors to be considered in awarding approval include:
  - (a) Placement on the priority list;
  - (b) The schedule for completing the design of the project; and
  - (c) The severity of any public health or water quality problem which will be corrected by the proposed project.
3. Initial approval of financial assistance for a project shall be deemed a binding commitment to provide such assistance.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42139)

**NAC 445A.770   Documents required; contracts for financial assistance; subsequent design reviews.**

1. To obtain financial assistance from the fund, the following documents must be submitted:
  - (a) An application for assistance in the form prescribed by the division.
  - (b) Final plans and specifications and an estimate by an engineer of the costs of construction for the project.
  - (c) A preliminary project schedule which provides a timetable for advertising and for opening bids, hiring and training operators, submission of an operation and maintenance manual, adoption of a system of user charges and a sewer use ordinance, completion of construction and initiation of operation. As used in this paragraph, initiation of operation means the date specified by the recipient on which use of the project begins for the purposes that it was planned, designed and built.
2. A contract for financial assistance must not be offered until the applicant:
  - (a) Receives initial approval of assistance, the completed design of the project, and the plans and specifications for the project; and
  - (b) Anticipates bid solicitation in the near future.
3. The contract for financial assistance must be prepared and transmitted to the applicant for his signature no later than the time of the approval to award the construction contract.



4. A determination of project eligibility must be made during the preparation of the facility plan. After the initial approval of financial assistance, subsequent design reviews must be for the purpose of ensuring that the proposed design is conceptually the same as that approved by the division.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.4214)

**NAC 445A.771 Examination of plans and specifications; submission of documents for review.**

1. An examination of the plans and specifications for a project must be performed to determine whether:

- (a) The design is consistent with the facilities described in the facility plan;
- (b) The proposed project, in concept, will meet discharge requirements; and
- (c) The project will comply with applicable federal and state requirements.

2. An applicant shall submit the following documents for review:

- (a) A design report.
- (b) Except as otherwise provided in this paragraph, a set of contract documents, specifications and plans not less than 90 percent complete. Depending upon the complexity of the project a 50 percent submittal may be required. The contract documents must include any general or special condition prescribed by the division.

(c) A final set of contract documents, specifications and plans. These must be submitted before advertising for bids.

(d) Any addenda issued during the bidding process.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42141)

**NAC 445A.772 Submission of agreements regarding projects intended to serve two or more municipalities.** If a project will serve two or more municipalities, the applicant shall submit the executed intermunicipal agreement, contract or other legally binding instrument necessary for the financing, building and operation of the proposed treatment works. This instrument must set forth the basis upon which costs are allocated, the formula by which costs are allocated and the manner in which the system of allocating costs will be administered.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42142)

**NAC 445A.773 Provision of financial assistance to help offset costs.**

1. A fixed amount of financial assistance must be provided to a recipient to help offset costs for planning, design and construction inspection, engineering and management. The amount allowed for construction inspection, engineering and management must be calculated by dividing the costs of construction incurred to date by the total eligible costs of construction and multiplying the result by the amount of the total allowance for construction services. As used in this subsection, "engineering" means consultation, investigation, the preparation of reports or other services for a project within the scope of the practice of architecture or professional engineering as defined by the law of this state.

2. The recipient may request payment of the entire allowance for planning and design as soon as the agreement for financial assistance is signed and money is available.

3. Financial assistance may also be provided for:
- (a) The allowable costs of the construction contract;
  - (b) The allowable costs of land;
  - (c) A contingency fund; and
  - (d) The cost of preparing an environmental impact statement if one is required.
- (Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42143)

**NAC 445A.774 Conditions of financial assistance and repayment.** Conditions of financial assistance and of any repayment of such assistance:

- 1. Must be set forth in the agreement for financial assistance.
- 2. Are subject to any requirements and limitations imposed by the United States Environmental Protection Agency.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42144)

**NAC 445A.775 Fee for award of financial assistance.**

- 1. The director may, with the approval of the department of administration, impose and collect a fee for each award of financial assistance from the fund. The fee must not exceed 0.5 percent of:

- (a) The amount of the loan, if assistance is given in the form of a loan.
  - (b) The amount of the obligation, if assistance is given in the form of a guarantee of a municipal obligation or the purchase of insurance for such an obligation.
  - (c) The amount refinanced, if assistance is given in the form of the refinancing of a municipal obligation.

- 2. Money so collected must be used to defray the cost of administering the fund.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42145)

### **Requirements for Projects**

**NAC 445A.777 Certification of compliance with requirements of federal law.**

Before a contract for financial assistance is transmitted to it for signature, a recipient must certify that it has complied and will comply with all requirements of federal law that are determined by the United States Environmental Protection Agency to apply to the operation of the fund.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.4215)

**NAC 445A.778 Consistency of project with water quality management plan.**

A project must be consistent with the approved elements of any applicable water quality management plan developed pursuant to 33 U.S.C. § 1285(j), 1288, 1313(e) or 1329 and the applicant must be the wastewater management agency designated in that plan.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42151)

**NAC 445A.779 Adoption of accounting standards by reference; maintenance of separate project accounts.**

- 1. The state environmental commission hereby adopts by reference the accounting standards contained in *Standards for Audit of Governmental Organizations, Programs, Activities and Functions*, published by the General Accounting Office. A copy of this publication is available at a cost of \$3.50 from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402.

2. A recipient of financial assistance shall maintain separate project accounts in accordance with generally accepted governmental accounting standards, including those adopted by reference in subsection 1.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42152)

**NAC 445A.780 Maintenance of records and accounts.**

1. A recipient shall:

(a) Establish an official file for the project. The file must contain an adequate record of all significant actions relating to the project.

(b) Establish accounts that accurately and adequately show all amounts of money:

(1) Received as financial assistance from the fund.

(2) Received and spent on the project.

(3) Received as income from the project.

(c) Establish a system of accounting which ensures that the final total costs of the project, including all direct and indirect costs, are recorded accurately.

(d) Establish and maintain such other accounts and records as are required by the division to comply with requirements for reporting established by the Federal Government.

(e) Retain all records relating to the project for at least 3 years after final repayment of financial assistance has been made or for any longer period required by the division.

2. Any records of a recipient relating to a project must be made available at any reasonable time for inspection or copying by any authorized representative of the division.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42153)

**NAC 445A.781 Audit of financial records relating to project.**

1. Whenever an audit is required by federal law or by an agency of the Federal Government, or whenever it determines that an audit is necessary to ensure the integrity of the fund, the division may require that an audit be performed of financial records relating to a project.

2. Any audit required pursuant to this section must be performed at the expense of the recipient by a certified public accountant who is independent of the recipient.

3. A report of the audit must be prepared by the auditor in the form prescribed by the division.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42154)

**NAC 445A.782 Use of value engineering.**

1. The applicant shall conduct value engineering if the total estimated cost of building the treatment works is more than \$10,000,000.

2. Any recommendations derived from the value engineering must be implemented to the extent feasible.

3. As used in this section, "value engineering" means a specialized technique for controlling costs which uses a systematic and creative approach to identify and to focus on any unnecessary cost to reduce the cost of a project without affecting the reliability or efficiency of the project.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42155)

**NAC 445A.783 Projects involving collection system work.** If a project involves collection system work, that work:

1. Must be for the replacement or major rehabilitation of an existing collection system and must be necessary to the integrity and performance of the complete waste treatment system; or

2. Must be for a new cost-effective collection system in an existing community which has sufficient existing or planned capacity to adequately treat such collected wastewater. Collection systems which primarily serve undeveloped areas are not eligible for financial assistance. If assistance is awarded, the recipient shall provide assurances that the existing population will connect to the collection system within a reasonable time after completion of the project.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42156)

**NAC 445A.784 Assurance of access to privately owned individual system.** An applicant for a privately owned individual system shall provide assurance of access to the system at all reasonable times for such purposes as inspection, monitoring, building, operating, rehabilitation and replacement.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42157)

**NAC 445A.785 Amount of infiltration and inflow into sewer system.**

1. Except as otherwise provided in this subsection, an applicant shall demonstrate to the satisfaction of the division that each sewer system discharging into the proposed treatment works project is not or will not be subject to excessive infiltration or inflow. Inflow into combined sewers shall not be considered excessive in any event.

2. If the rate of inflow results or will result in chronic operational problems, the applicant shall perform a study of the sewer system to determine the quantity of excessive inflow and propose a program to eliminate the problem.

3. If the applicant believes that any specific portion of the sewer system is subject to excessive infiltration, the applicant may confirm that belief through a cost-effect analysis and propose a program of rehabilitation to eliminate the problem.

4. If an existing sewer system is subject to excessive operation and maintenance costs, overflows or blockages because of deterioration or overloading of the system, the applicant may perform an analysis of the system and propose a program of sewer replacement to eliminate or substantially reduce the problem.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42158)

**NAC 445A.786 Approval of system of user charges or ordinance governing sewer use.** An applicant must obtain the approval of the division for any system of user charges or ordinance governing sewer use. If any such system or ordinance is in effect, the applicant shall demonstrate to the satisfaction of the division that it complies with the requirements of NAC 445A.787 or NAC 445A.788 and 445A.789, as appropriate, and is enforced.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42159)

**NAC 445A.787 Requirements for ordinance governing sewer use.** An ordinance governing sewer use must:

1. Prohibit any new connections from inflow sources into treatment works;
2. Require that new sewers and connections to treatment works be properly designed and constructed; and
3. Require that all wastewater introduced into the treatment works not contain toxic or other pollutants in amounts or concentrations that:
  - (a) Endanger the safety of the public or the physical integrity of the treatment works;or
  - (b) Violate effluent or water quality limitations.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.4216)

**NAC 445A.788 Requirements for system of user charges.** A system of user charges must:

1. Be designed to produce the money required for costs of operation, maintenance and replacement of treatment works;
2. Provide that each user who discharges pollutants which cause an increase in the cost of managing the effluent or sludge from the treatment works shall pay for the increased cost;
3. Provide that each user or class of users shall pay its share of the cost of operation, maintenance and replacement of treatment works within the service area of the applicant, based upon the proportionate contribution by the user or class to the total wastewater load;
4. Provide that each user will be notified at least annually, in conjunction with a regular bill or other means acceptable to the division, of that portion of the bill attributable to the costs of operation, maintenance and replacement; and
5. Include an adequate system of financial management that will account accurately for revenues generated by the system and expenditures for operation, maintenance and replacement based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42161)

**NAC 445A.789 Adoption of system of user charges.** One or more municipal legislative enactments must incorporate the system of user charges. If a project accepts wastewater from other municipalities, the subscribers receiving waste treatment services from the recipient shall adopt a system of user charges meeting the requirements of NAC 445A.788. This system must be incorporated in an appropriate legislative enactment by each municipality contributing wastes to the treatment works.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42162)

**NAC 445A.790 Effect of system of user charges on inconsistent agreements.** A system of user charges supersedes any agreement or contract to the extent the agreement or contract is inconsistent with any provision of NAC 445A.788 or 445A.789.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42163)

**NAC 445A.791 Periods for adoption and implementation of sewer use ordinance and system of user charges.** A recipient shall adopt its sewer use ordinance and implement its system of user charges before the treatment works is placed in operation. The recipient shall implement the system of user charges and sewer use ordinance during the entire useful life of the treatment works.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42164)

**NAC 445A.792 Approval of award of contract for construction relating to project; resolution of disputes regarding bidding.**

1. Before awarding any construction contract relating to a project, an applicant for financial assistance shall submit to the division, in the form prescribed by it, a request for approval of the award.

2. The division may approve the award of the contract only to the lowest responsive, responsible bidder. The division shall also review the request for approval to ensure that the applicant, his consultants and his contractors have complied with the positive effort policies relating to disadvantaged businesses.

3. The division shall not participate in the resolution of any dispute relating to bidding. The resolution of any such dispute is the sole responsibility of the applicant. A request for approval must not be granted until any such dispute has been resolved.

4. A request for approval must not be granted until it can be demonstrated that the project is consistent with approved water management plans and that a valid discharge permit has been issued for the project.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42165)

**NAC 445A.793 Period for award of prime construction contract; extension of period.**

1. Except as otherwise provided in subsection 2, a recipient of financial assistance shall award the prime construction contract within 90 days after the division approves the award of the contract. If the contract is not awarded within that time, the contract for financial assistance is null and void.

2. The division may, upon the request of a recipient, grant an extension of the time provided by subsection 1 in any case where unusual or extenuating circumstances exist. Any request for an extension must be made in writing and must set forth facts justifying the extension.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42166)

**NAC 445A.794 Compliance with federal and state law regarding labor and wages.**

1. A recipient of financial assistance shall comply with the provisions of the Davis-Bacon Act, 40 U.S.C. §§ 276a et seq., if they apply, and the provisions of NRS 338.010 to 338.090, inclusive.

2. The division shall review the final contract documents to verify that the proper federal and state wage determinations have been included.

3. The recipient is responsible for assuring compliance with all applicable labor laws.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42167)

**NAC 445A.795 Participation by disadvantaged businesses: Generally.**

1. An applicant for financial assistance shall comply with the requirements of federal law concerning the participation of disadvantaged businesses.

2. Each recipient of financial assistance shall attempt to comply with the fair share percentages established annually for disadvantaged businesses by the division and the United States Environmental Protection Agency. Any recipient not meeting these goals shall submit evidence of compliance with the affirmative steps identified in NAC 445A.796.

3. An applicant for financial assistance shall submit with his request for approval of an award a report, in the form prescribed by the division, of participation by disadvantaged businesses. If the low bidder on any construction contract does not meet the fair share requirements for disadvantaged businesses, the applicant shall submit to the division evidence of compliance by the bidder with the affirmative steps identified in NAC 445A.796.

4. A recipient of financial assistance shall submit to the division, in the form prescribed by the division, a report of participation by disadvantaged businesses following any quarter during which any procurement of \$10,000 or more is executed for the project. As used in this subsection, "quarter" means a quarter in the federal fiscal year.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42168)

**NAC 445A.796 Participation by disadvantaged businesses: Awarding of subcontracts.** If the contractor for a project awards any subcontracts relating to the project, he shall take affirmative steps to ensure that disadvantaged businesses are used to the extent possible as sources of supplies, equipment, construction and services. These affirmative steps must include:

1. Including such businesses on solicitation lists.
2. Assuring that such businesses are solicited if they are potential sources.
3. Dividing total requirements, if economically feasible, into small tasks or quantities to permit maximum participation by disadvantaged businesses.
4. Using the services of Nevada Economic Development Company and the Nevada Office of Small Business to locate disadvantaged businesses capable of performing the work to be subcontracted.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42169)

**NAC 445A.797 Notification of division regarding steps in construction and beginning of operation of project.** A recipient of financial assistance shall notify the division promptly in writing of:

1. The award of the prime construction contract for the project.
2. The beginning of construction of the project, stating the date on which he anticipates construction will be completed.
3. Any substantial change in the scope of the project. No such change may be undertaken until it has been approved in writing by the division.
4. The cessation of all major construction work on the project, in any case where the cessation of work is expected to or does continue for 30 days or more.
5. Any circumstance or condition that is expected to or does delay the completion of construction for 90 days or more after the anticipated date of completion reported pursuant to subsection 2.
6. The completion of construction of the project.
7. The beginning of the operation of the project.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.4217)

**NAC 445A.798 Entry by representative of division onto site of project.** During the construction of a project, the recipient shall permit any authorized representative of the division to enter onto the site of the project at any reasonable time.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42171)

**NAC 445A.799 Oversight inspections; final construction inspection.**

1. The division may conduct oversight inspections during the construction of a project. The primary purpose of any such inspection must be to ascertain that the recipient is constructing the project according to applicable contract requirements. The first inspection must normally be conducted at the time the project is 10 percent complete. Subsequent inspections must be conducted only if they are deemed necessary by the division.

2. The division shall conduct a final construction inspection of each project. The primary purpose of this inspection must be to ascertain that the project has been constructed according to the approved plans and specifications and to ensure that required mitigation measures have been implemented. At the time of the inspection, the completion date for the project must be established for the purpose of beginning the 1-year period for certification of the performance of the project.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42172)

**NAC 445A.800 Submission of copies of change orders.** A copy of each executed change order must be submitted to the division.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42173)

**NAC 445A.801 Submission and approval of operation and maintenance manual for project.** Before a project is 90 percent completed, a recipient shall submit to the division an operation and maintenance manual for the project. Not more than 90 percent of the total financial assistance for the project may be provided until the manual has been reviewed and approved by the division.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42174)

**NAC 445A.802 Submission of set of as-built drawings of project.** A recipient shall supply the division with one set of as-built drawings of the project.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42175)

**NAC 445A.803 Certification of performance of project; corrective action.**

1. The division shall establish, in consultation with each recipient, the date that project operations are capable of being initiated for the purpose of establishing the procedure for certification of the performance of the project.

2. Before any certification of performance for a project is submitted, the division shall conduct an inspection of the project to ensure that its facilities are operating and capable of meeting discharge standards.

3. After a project has been in operation for 1 year, the recip shall submit a certification that the project meets or fails to meet performance standards. The project must comply with all applicable design specifications and, except for a nondischarging project, all applicable effluent requirements. Any nondischarging project must, where appropriate, meet requirements for the elimination of overflows and the reduction of infiltration or inflow. At the request of a recipient, the division shall assist in developing applicable performance standards.



4. If the project cannot be affirmatively certified, the recipient shall prepare a report of corrective action which includes an analysis of the cause of the failure of the project to meet performance standards and an estimate of the nature, scope and cost of necessary corrective action. The division shall conduct follow-up inspections as necessary to determine whether the project meets performance standards. The cost of any corrective action is not eligible for financial assistance.

5. As used in this section, "performance standards" means the criteria used to evaluate the compliance of a project with the requirements contained in design specifications and a discharge permit.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42176)

**NAC 445A.804 Notification of claims arising from or related to project.** A recipient shall notify the division of any claims against the owner, the engineer, the contractor or any subcontractor arising from or related to the project.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42177)

**NAC 445A.805 Approval required to abandon, discontinue use of or dispose of project.** A recipient shall not abandon, substantially discontinue his use of, or dispose of a project during its useful life without the prior written approval of the division.

(Added to NAC by Environmental Comm'n, eff. 9-19-90)—(Substituted in revision for NAC 445.42178)

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